

## **MINUTES**

### **MONTANA SENATE 56th LEGISLATURE - REGULAR SESSION**

#### **COMMITTEE ON JUDICIARY**

**Call to Order:** By **CHAIRMAN LORENTS GROSFIELD**, on January 18, 1999 at 10:00 A.M., in Room 325 Capitol.

#### **ROLL CALL**

**Members Present:**

Sen. Lorents Grosfield, Chairman (R)  
Sen. Al Bishop, Vice Chairman (R)  
Sen. Sue Bartlett (D)  
Sen. Steve Doherty (D)  
Sen. Duane Grimes (R)  
Sen. Mike Halligan (D)  
Sen. Ric Holden (R)  
Sen. Reiny Jabs (R)  
Sen. Walter McNutt (R)

**Members Excused:** None.

**Members Absent:** None.

**Staff Present:** Judy Keintz, Committee Secretary  
Valencia Lane, Legislative Branch

**Please Note:** These are summary minutes. Testimony and discussion are paraphrased and condensed.

**Committee Business Summary:**

Hearing(s) & Date(s) Posted: SB 128, SB 185, SB 186,  
1/15/1999  
Executive Action: None

#### **HEARING ON SB 185**

**Sponsor:** SEN. CHRIS CHRISTIAENS, SD 23, Great Falls

**Proponents:** None

**Opponents:** Ross Cannon, Direct Marketers Assoc.

**Opening by Sponsor:**

**SEN. CHRIS CHRISTIAENS, SD 23, Great Falls,** introduced SB 185, which is an act expanding the definition of prohibited gambling activities to include mail sweepstakes. He reported that people have told him they were expending \$400 to \$500 a month for a chance to win money. To see how widespread sweepstakes were, he started answering some of the sweepstake mail he was receiving. One day he received 21 different sweepstake pieces of information. Once you reply, your name is sold to other lists. Most of the people who get caught up in answering sweepstake mail believe that if they do not purchase something, their name is placed into a different category that will not win the prize. He is not aware of a person in Montana winning a large prize from a sweepstake entry.

**Proponents' Testimony:** None.

**Opponents' Testimony:**

**Ross Cannon, Direct Marketers Assoc.,** remarked that a bill has been introduced that regulates telemarketing. One of the techniques used in telemarketing consists of prizes and sweepstakes. Section 10 of SB27, referring to sweepstakes, states that prior to requesting any payment from consumers, a seller or telemarketer shall disclose in a clear and conspicuous manner the total cost of goods or services; all material restrictions, limitations, or conditions pertaining to the purchase; and in any prize promotion the odds of being able to receive the prize, or if the odds are not calculable in advance, the factors used in calculating the odds. He suggested putting the necessary regulatory provisions considered appropriate into that bill rather than banning sweepstakes.

The Department of Commerce will administer SB27. Telemarketers are required to register and put up bonds. If there is fraud, there is a right to recover any losses suffered through an administrative proceeding before the department.

***{Tape : 1; Side : A; Approx. Time Counter : 10.17}***

**Questions from Committee Members and Responses:**

**SEN. DOHERTY** stated that in reading the bill, it appeared the only thing that was being banned would be the kinds of sweepstakes involving paying valuable consideration or by purchasing goods and services. He questioned whether free solicitation would still be allowed. **SEN. CHRISTIAENS** responded

that free solicitation would also be prohibited if it was sent through the mail and was unsolicited. Everyone of these documents state that a purchase is not necessary, but they usually highly suggest that you are one of a number of claimants and should you not make a purchase your name would be removed from the list. This is a very slick way of getting people to participate.

**SEN. BISHOP** questioned if consideration was given to the ICC.

**SEN. CHRISTIAENS** stated that the drafter reviewed this carefully. Sweepstakes are simply forbidden and thus the interstate commerce provisions are not of concern. He added that eight states have this type of legislation.

**SEN. BISHOP** questioned the status of the lawsuit in Florida involving Publishers Clearing House. **SEN. CHRISTIAENS** explained that Publishers Clearing House has been banned from promoting in the state of Florida. There is some belief that should someone who received notice in the mail stating that they were the winner of \$10 million dollars took this to court, a jury may award them their winnings. Most of the information assures the addressee that he or she is the winner.

**SEN. HALLIGAN** questioned the possibility of an equal protection issue in terms of prohibiting one particular game. **Jim Oppedahl, Department of Justice**, stated they have some concerns regarding how this legislation would fit within the regulatory scheme of gambling. This would not involve the classic definition of consideration, chance and reward. This seems closer to deception. The bill needs some clarification in terms of civil/criminal penalties.

**CHAIRMAN GROSFIELD** asked for clarification of subsection (c) on the last page of the bill. He believed that subsections (a) and (b) would fit the gambling statutes. **SEN. CHRISTIAENS** explained that subsection (c) is provided because the Montana Supreme Court has already ruled that a gift enterprise is not legal. The M & M Bar in Butte would sell a person a cigar and that person's name would go into a barrel for a drawing in which they could receive \$25 in cash. This was ruled illegal. Sweepstakes are an expansion of a gift enterprise. This legislation didn't seem to fit in SB 27 because that addresses telemarketing while this bill refers to mail.

**Mr. Oppedahl** clarified that gift enterprise is being asked or required to buy something in order to get a chance to win something. This is prohibited by the Montana Constitution unless specifically authorized. The alternative entry form would not be under the definition of gift enterprise.

**Closing by Sponsor:**

**SEN. CHRISTIAENS** remarked that the sweepstakes organizations usually find a way to convince people to continue participating in the chance to win. As the person continues trying to win, they are asked to send money for a processing fee. If the processing fee is not sent in, the person does not receive the prize. Most of the processes are continuing and the drawing is at a much later date. People are asked to choose the color of the new car, etc. One of the ways to get around this is to place some serious provisions and fees on this process so that the persons who are defrauded have the ability to sue within the state.

**HEARING ON SB 128**

**Sponsor:**           **SEN. CHRIS CHRISTIAENS, SD 23, Great Falls**

**Proponents:**       **Beth O'Halloren, State Auditor's Office**  
                          **Perry Eskridge, Department of Commerce**  
                          **Betty Beverly, Montana Senior Citizens Assoc.**  
                          **Steve Bullock, Department of Justice**  
                          **Jeanne Bowman, Government Relations Consultant,**  
                          **Montana Credit Union League**  
                          **Bill Leary, Montana Bankers Assoc.**

**Opponents:**       **None**

**Opening by Sponsor:** **SEN. CHRIS CHRISTIAENS, SD 23, Great Falls,** introduced SB 128, which makes permanent the Montana Living Trust Act and eliminates the license application fee for persons required to be licensed in this state to sell living trusts. He carried this legislation last year. It is currently law but it does have a sunset. Two years ago there was an average of 750 complaints a year filed with either the Insurance Commissioner's Office or the Department of Commerce regarding organizations that provided misinformation. The trusts were very expensive. There is one case in which the Department is working on an action and there will be a fine. Complaints have dramatically decreased due to the provisions in this legislation.

**Proponents' Testimony:**

**Beth O'Halloren, State Auditor's Office,** explained that a living trust is an estate planning tool that can provide for the management of assets during a lifetime and can direct

distribution of the estate's assets after death. Unfortunately, living trusts have become a common vehicle for fraud and are sold as a generic commodity by slick, persistent salespeople who promise the world and deliver an unnecessary product. Salespeople promote large estate tax savings through living trusts but fail to acknowledge that not many people qualify for inheritance taxes and do not hold the type of estate assets that would require payment of the taxes. They exaggerate the pain of probate which is especially misleading because Montana permits informal probate.

The con artists who sell living trusts have little or no understanding of Montana probate codes, state or federal tax codes or estate law. The legislation passed last session was remarkably preventive, dissuading many unlicensed and untrained individuals from offering their assembly line trusts to Montanans. Mass marketing seminars halted as did living trusts complaints.

**Ms. O'Halloren** presented her written testimony, **EXHIBIT(jus13a01)**.

**Perry Eskridge, Department of Commerce**, rose in support of SB 128.

**Betty Beverly, Montana Senior Citizens Assoc.**, urged the Committee to pass this legislation.

**Steve Bullock, Department of Justice**, rose in support of SB 128. This law serves as a deterrent and also channels any complaints and concerns to the State Auditor's Office. Since the enactment of this legislation they no longer receive consumer complaints about living trust actions in Montana.

**Jeanne Bowman, Government Relations Consultant, Montana Credit Union League**, presented her written testimony, **EXHIBIT(jus13a02)**.

**Bill Leary, Montana Bankers Assoc.**, rose in support of SB 128. This legislation has worked very well.

**Opponents' Testimony:** None

**Questions from Committee Members and Responses:**

**SEN. HOLDEN** asked why an additional FTE was needed per the fiscal note. **Ms. O'Halloren** explained they are only requesting a .5 FTE because there has been a decrease in duties.

**SEN. HALLIGAN** asked why the license fee was being eliminated. **Ms. O'Halloren** explained that it is their understanding that CI-75 impacts the fees reauthorized by statute if there is a sunset clause in effect in the current legislation. They have not asked for the fees in this bill.

**SEN. BARTLETT** stated that a number of bills being drafted to implement CI-75 provisions contain a contingency voidness clause which states that if the initiative is overturned in the courts, the measures to change the law to conform to the requirements of CI-75 would not be effective. **Ms. O'Halloren** stated they had not considered that option. The income from fees for registration under this act is not significant. The fee for an investment advisor registration is \$200 per year for the company and \$50 for the individual salesperson.

**SEN. GRIMES** asked how many licenses were issued last year. **Ms. O'Halloren** explained that they received 15 inquiries and three applications. One application became effective in the state.

**SEN. GRIMES** questioned whether the decrease in complaints is related to the legislation. **Ms. O'Halloren** speculated that the drop in the complaints is directly attributable to the enactment of the legislation. They provided a fairly rigorous informational effort to individuals and companies that were selling living trusts in the state prior to the enactment of the living trust act to let them know what would be required of them. These people have not registered as investment advisors. They have also noted that the numerous seminars in hotels offering living trusts are no longer being held.

**Closing by Sponsor:**

**SEN. CHRISTIAENS** closed on SB 128. He remarked that there are legitimate people who use living trusts as a part of good probate planning. This is good legislation that needs to stay on the books.

Additional handouts - Living Trust or Living Nightmare,  
**EXHIBIT(jus13a03)**, Montana Law Week, November 23, 1996,  
**EXHIBIT(jus13a04)**.

*{Tape : 1; Side : B; Approx. Time Counter : 10.55}*

**HEARING ON SB 186**

**Sponsor:** **SEN. JACK WELLS, SD 14, Bozeman**

**Proponents:** **Brian Judy, National Rifle Association**

Gary Marbut, Montana Shooting Sports Assoc.,  
Western Montana Fish and Game Assoc., and the  
Big Sky Practical Shooting Club  
Marcia Erickson, Montana Womens Shooting Assoc.  
Alfred Budwell, Northwest Arms Collectors and  
Montana Weapons Collectors Society  
Bill Leary, Montana Bankers Association  
REP. BOB CLARK, HD 8, Ryegate  
Jim Smith, Sheriff's and Peace Officer's  
Association  
Troy McGee, Chiefs of Police Association

Opponents: Beth Baker, Department of Justice  
Mark Cadwallader, Citizen  
Alec Hanson, League of Cities and Towns

Opening by Sponsor:

SEN. JACK WELLS, SD 14, Bozeman, introduced SB 186. He remarked that this legislation is an improvement of sportsmen and gun owner's rights. The primary objective of HB 429, which he carried last session, was to open up the areas where concealed weapon permit owners could carry concealed weapons. The Sheriffs and Peace Officers Association asked him to request that the bill be tabled in the Senate due to their concerns. An agreement was reached to convene an interim committee to develop a better bill. They met and developed a bill that met their requirements. When addressing carrying concealed weapons in places that served alcohol, the request was to modify the bill to allow provision for testing people to see if they were indeed consuming alcohol. The current law does not allow a person to consume alcohol and carry a concealed weapon.

Section 2 of SB 186 addresses carrying concealed weapons in prohibitive places. They eliminated the prohibitive place and defined where a concealed weapon can be carried. Two of the areas they want to expand are places that alcohol is served and places where financial institutions are in the immediate area.

In small towns in Montana, most eating establishments sell alcohol. A law abiding citizen cannot have lunch in one of these establishments without taking off his weapon and leaving it in his car.

They have worked with the Bankers Association to develop the language in Section 2 which addresses institutions open during normal business hours. A concealed weapon cannot be carried into a bank when they are conducting business.

At the request of the Sheriffs and Police Officers Assoc., Section 1 (2) was added which requested a person to submit to a breath test if it appears that he is consuming alcohol and the officer has some knowledge or suspicion that he carries a concealed weapon. Alcohol concentration amounts were also added.

***{Tape : 2; Side : A; Approx. Time Counter : 11.07}***

**Proponents' Testimony:**

**Brian Judy, National Rifle Association**, spoke in support of Senate Bill 186. His understanding is that when HB 825 passed, there were agreements and at the last minute Section 45-8-328, prohibitive places, was added to the bill. Currently it is illegal to carry a concealed weapon without a permit. However, it is necessary to have a permit outside city limits. It is illegal to carry a concealed firearm while you are under the influence of alcohol. Federal law prohibits the carrying of weapons in federal government buildings, and local municipalities in the state of Montana have the ability to restrict in government buildings within their jurisdiction.

It is illegal to carry a concealed weapon into a financial institution or a restaurant that serves alcohol. However, it is legal to carry a weapon openly. Montana is one of 42 states that has a concealed weapon permit law. Montana is one of 31 out of the 42 states that has a very liberal law in that permits must be issued to law abiding citizens. The evidence is that concealed weapon permit holders are more law abiding citizens than the population as a whole. It makes no sense to require a business woman who is a concealed weapon permit holder to carry her firearm into the institution openly or to leave it in her car where it can be stolen. Laws such as 45-8-328 are unnecessary. They disarm only the law abiding citizens.

Ideally 45-8-328 would be repealed because it doesn't make sense. In a spirit of compromise the NRA supports this bill as amended.

**Gary Marbut, Montana Shooting Sports Assoc., Western Montana Fish and Game Assoc., and the Big Sky Practical Shooting Club**, rose in support of SB 186. They would like to see the bill approved as written. His understanding is that members of the interim committee who originally supported the bill now wish to amend it. They would like to see all the prohibitive places in the law stricken.

He was the chief proponent of HB 70 in 1989. This legislation was to change Montana's concealed weapon permit laws from the



discretionary system. The bill failed in the House on transmittal day. They worked with law enforcement and came up with a bill that everyone could support in 1991. There never has been any constituency for the prohibitive places which were added in the 1991 legislation.

There is no other state that issues concealed weapon permits which have laws prohibiting people from exercising those permits in bars, banks, and public buildings. These states do not have problems with persons who hold these permits. People who are likely to be causing problems to society are not the people who will get in line for the permitting process.

**Marcia Erickson, Montana Womens Shooting Assoc.**, rose in support of SB 186.

**Alfred Budwell, Northwest Arms Collectors and Montana Weapons Collectors Society**, asked that the bill be passed as written. He was a participant in the meetings which have taken place for the past two years. He provided written testimony from **James Hamman, EXHIBIT(jus13a05)**.

There have been 5,559 permits issued in the state and 11 have been revoked. These revocations included deceased persons. The .04 alcohol content in this bill is less than half of what is required for driving under the influence.

**Bill Leary, Montana Bankers Association**, rose in support of the changes in Section 2 only. Over the interim a group tried to work out the difficulties in the bill which the **Montana Bankers Association** opposed in the last session. The section is written in accordance with the banking industry's requirements.

**REP. BOB CLARK, HD 8, Ryegate**, remarked that he had also worked with the interim group that met to come up with a compromise. The Gun Owners of America wanted Vermont style carrying in the state of Montana. Studies have shown that in counties where concealed carry is allowed throughout the United States, crime has decreased drastically. Criminals know that law enforcement is generally reactive.

**Jim Smith, Sheriff's and Peace Officer's Association**, provided his written testimony and an amendment, **EXHIBIT(jus13a06)**. **SEN. WELLS** voluntarily withdrew his bill in 1997 and asked this Committee to table it. A group of stakeholders met five times over the interim. These discussions did not include representatives from MACo or the League of Cities and Towns.

Consensus was reached in several areas. Concealed weapon permit holders are citizens with Second Amendment rights and are not a threat to public safety. The experience in the state has been positive. Montana law in regard to concealed weapons is more restrictive than those of surrounding states.

It was difficult for the group to agree on public safety versus personal safety. Law enforcement's issue is to protect the public safety. Carrying concealed weapons as a deterrent to crime is still under consideration by the Association.

This bill revises the prohibitive places section of the law in three areas: 1) banks, credit unions and other financial institutions; 2) a room in which alcoholic beverages are sold; and 3) a building owned or leased by local, state, federal government.

Section 1 deals with the requirement for a breath test. It states that a peace officer may request a breath test from someone who is suspected of being under the influence while carrying a concealed weapon. The amendment they are proposing imposes a penalty if someone so suspected does not take the breath test. Without enforcement the language is meaningless. Refusal to take the breath test would result in the loss of the person's permit for a period not to exceed four years.

Regarding a building owned or leased by local, state, or federal government, that section is stricken entirely. Another section in current law gives local governments the power to determine whether concealed or unconcealed weapons can be carried in buildings. The consensus was that state law should default to that section of law and allow cities and counties to pass local ordinances to deal with this matter.

**Troy McGee, Chiefs of Police Association**, concurred with the amendments as sponsored by the Sheriff's and Peace Officer's Association. Under current law, a local jurisdiction can place restrictions on carrying weapons in public buildings. The current law states "publicly owned" buildings. This legislation states "publicly owned or leased". This is a concern in larger cities where the state government leases a large number of buildings.

#### **Opponents' Testimony:**

**Beth Baker, Department of Justice**, stated that under current law a person is prohibited from carrying a concealed weapon in a public building even if the person has a permit and even if the building is leased by the government. Under this bill, regulation would be left to local jurisdictions, Section 45-8-

351. This section limits the authority of local jurisdictions to publicly owned buildings. There is no prohibition extending to leased buildings. The Department of Justice leases spaces for the Highway Patrol, the Gambling Control Division, and nearly all of their field offices are in leased buildings.

Current law provides a uniform standard that applies across the state. It is important for public employee safety as well. The department has employees who travel to every corner of the state to conduct state business, often in highly charged situations. Most of these employees do not carry weapons as part of their jobs. It is sensible to have a single consistent rule that applies statewide rather than be subject to a multitude of varying city and county ordinances. There is simply no reason to have concealed weapons in government offices or to mix guns in places of alcohol. They see no justification in removing those protections from the law.

They also have a concern about Section 1 in that the language needs to track more closely with the DUI statutes in referring to people who can be certified to take the tests.

**Mark Cadwallader, Citizen,** opposed deleting the current prohibition of carrying concealed weapons in government owned or leased buildings. There may be some unintended consequences. Absent a local ordinance, guns could be allowed in public libraries, etc. He was not sure that a justice of the peace or a district court judge would have the authority to prohibit concealed weapons in their courtroom. This may be in conflict with SB 65 and HB 45. Both those bills prohibit guns in schools as well as on school grounds. There is no coordination instruction. When courts are faced with interpreting two laws that are seemingly in conflict, they usually look to the latest action taken by the legislature. This bill is scheduled behind the other two bills.

**Alec Hanson, League of Cities and Towns,** raised a concern about the application of this bill to local ordinances. It appears that the responsibility for regulating the concealed weapons in public buildings would become that of the cities and counties. They are backing legislation to decriminalize the municipal code. Municipal code violations are generally misdemeanors. He questioned whether the cities and towns have the legal enforcement authority they need to enforce this section of the law, if approved.

*{Tape : 2; Side : B; Approx. Time Counter : 11.45}*

**Questions from Committee Members and Responses:**

**SEN. DOHERTY** remarked that different ordinances adopted in different counties would be very complex and confusing to concealed weapon permit holders. **Mr. Smith** stated that the citizen would have the responsibility and obligation to know the law in respective areas. Someone may still have a concealed weapon on while in a parking garage that is owned by a city. Highway rest areas are owned by the state.

**SEN. DOHERTY** remarked that if this bill was passed in its current form, any unit of local government whether it is a city or a county would be required to develop and pass an ordinance. He questioned whether the state would provide any funding for local government to develop the local ordinances. **SEN. WELLS** stated that all of the first class cities and some other communities in Montana already have ordinances that establish where concealed weapons cannot be carried. The law continues to place the burden on the permit holder to know the ordinances.

**SEN. HALLIGAN** raised a concern that law enforcement personnel did not have the ability to require a person suspected of carrying a concealed weapon to submit to a breath test. **SEN. WELLS** remarked that the law is too restrictive regarding concealed weapons. By making it less restrictive, the law abiding permit holder would have an opportunity to exercise his rights. The law prohibits any consumption of alcohol and carrying of a permit weapon. The permit holders know this and strictly adhere to this prohibition.

**CHAIRMAN GROSFIELD** commented that the bill only spoke of alcohol. He questioned whether it should not also apply to drugs. **SEN. WELLS** explained that alcohol was addressed primarily because of the statute that requires a person to take their weapon off before they enter an establishment that serves alcohol. When the language was inserted in Section 1 (2) at the request of the law enforcement people, it addressed alcohol. The drug issue was not discussed.

**CHAIRMAN GROSFIELD** stated that current law states that a person can appeal the denial or revocation of a permit. The person who revokes the permit is the sheriff. The appeal process does not speak to sheriffs. **Ms. Baker** clarified that the denied applicant would file an action in district court and the sheriff would be named as the respondent.

**CHAIRMAN GROSFIELD** remarked that the issuing sheriff may be located in one county and the incident could take place in another county. **Mr. Smith** stated that the revocation would come from the issuing sheriff and then coordination would be necessary between the issuing sheriff and the sheriff in the county where the violation was committed. This would be appealable.

**SEN. BARTLETT** questioned if the sponsor was more disturbed by the severity of the penalty or penalties in general for refusal to take a test. **SEN. WELLS** responded that he was more concerned about the severity. A penalty for refusal is the implied consent rule.

**SEN. BARTLETT** inquired whether officers would be equipped to give the breath test. **Mr. McGee** stated that every patrol car in Helena has PBTs and is equipped and certified. **Bill Fleiner, Lewis and Clark Deputy Sheriff**, stated that their officers are certified on the PBTs and carry them in their vehicles.

**Closing by Sponsor:**

**SEN. WELLS** referenced a book written by Wayne Lapier, a former director of the NRA. He added that in the opening chapter of the book he pointed out that gangs in Florida killed foreigners who traveled to Disneyworld. The gang members explained that they knew they did not have guns because they were unable to carry a weapon on a plane. They followed them to the rental car agency and observed that they did not stop at a pawn shop or elsewhere to pick up a weapon. They picked on victims who did not carry weapons. Montana is alone in prohibiting places where concealed weapons can be carried. Our law abiding citizens are put at jeopardy. In Utah, concealed weapon permit holders are exempted from the school prohibitions. He added that drugs would be covered in Section 1, line 14, which includes a person who carries a firearm while under the influence of an intoxicating substance.

**ADJOURNMENT**

Adjournment: 12:10 P.M.

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SEN. LORENTS GROSFIELD, Chairman

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JUDY KEINTZ, Secretary

LG/JK

**EXHIBIT** (jus13aad)